

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

NICHOLAS MARTIN on behalf of himself and)
others similarly situated, :)
Plaintiff,) 1:10-cv-7725
v.) Judge St. Eve
BUREAU OF COLLECTION RECOVERY,)
LLC,)
Defendant.)

**AGREED MOTION TO EXTEND TIME TO ANSWER AMENDED CLASS ACTION
COMPLAINT AND OPPOSED MOTION TO EXTEND TIME TO RESPOND TO CLASS
CERTIFICATION MOTION**

NOW COMES Defendant, BUREAU OF COLLECTION RECOVERY LLC, by and through its undersigned counsel, and pursuant to FRCP 6(d), seeks (A) a two day extension of time to answer Plaintiff's Amended Class Action Complaint, until June 24, 2011, and (B) until July 22, 2011 to respond to Plaintiff's Class Certification Motion, and in support states:

A. Agreed Motion to Extend Time to Answer Amended Class Action Complaint

1. By order of Court (dkt. #51), Defendant was required to answer the Amended Complaint by June 22, 2011. Plaintiff's counsel has agreed to this motion.

2. No harm or prejudice will come from granting this brief extension.

B. Opposed Motion to Extend Time to Respond to Class Certification Motion

3. By order of Court (dkt. #37), Defendant was required to answer the Amended Complaint by June 29, 2011. Plaintiff's reply is due on July 15, 2011. In granting Plaintiff's Second Motion to Compel (which related to the production of materials related to affirmative defenses which will be asserted in opposition to class certification), this Court granted Defendant until July 15, 2011 to produce responsive documents. *See* dkt. # 50.

4. Since Defendant was only recently required to produce these documents by this Court and it is taking considerable time to produce the documents from creditors, Defendant submits that its response to the Class Certification Motion should be extended until July 22, 2011 (one week after the production of the materials at issue). This would allow Defendant sufficient time to incorporate these documents into its response. Otherwise, Defendant would be required to supplement its response which would lead to further briefing. Extending the due date of the response is consistent with the Supreme Court's position that merits based defenses should be addressed by district courts at the certification stage.

5. Additionally, this extension is supported by the fact that Plaintiff has made a near policy limits demand in this case on June 22, 2011 which is set to expire on July 7, 2011. Consistent with FRCP 1, which states that the Federal Rules of Civil Procedure "should be construed and administered to secure the just, speedy and inexpensive determination of every action and proceeding," Defendant and its insurer should be allowed to explore settlement options prior to expending considerable amounts of attorney time in responding to a class certification motion.

6. Plaintiff's counsel declined to agree to this extension unless Defendant agreed that July 15, 2011 would serve as a *final* date for the production of responsive documents – meaning that Defendant would be unable to submit any additional documents to support its affidavit defenses after that date. Defendant could not agree to this condition as it amounts to a waiver of FRCP 26(e)(1)(A) which provides that parties may supplement discovery responses "in a timely manner." Here, Defendant was only recently ordered to produce the responsive documents subject to Plaintiff's Second Motion to Compel. Given the fact that it is reasonable to presume that additional supplementation may occur after July 15, 2011, Defendant cannot agree to waive

its statutory rights to supplement its discovery responses. Furthermore, Defendant does not think it is reasonable to waive its rights under FRCP 26(e)(1)(A) simply because it would like to have its response to the class certification motion to fall *one week* after the court ordered due date. In summary, Plaintiff's request is not consistent with the "just, speedy and inexpensive determination of every action and proceeding." *See* FRCP 1.¹

7. Additionally, defense counsel seeks this extension in light of recent and current professional commitments in the following pending cases (*D.G. v. William W. Siegel & Associates*, 11-cv-00599 (answer), *Pesce vs. First Credit Services*, 11-cv-1379 (discovery), *Clip Ventures LLC vs. Suncast*, 11-cv-1700 (response to motion to dismiss) and *Aim Consulting vs. Levin Ginsburg*, No. 2010 L 8121 (Cook County) (discovery)). Additionally, defense counsel is attending a weekend long firm-mandated retreat from midday-Friday through Sunday of this week. No harm or prejudice will come from granting this brief extension.

WHEREFORE, for the reasons set forth above, Defendant BUREAU OF COLLECTION RECOVERY LLC respectfully requests that this Honorable Court grant it (A) a two day extension of time to answer Plaintiff's Amended Class Action Complaint, until June 24, 2011, and (B) until July 22, 2011 to respond to Plaintiff's Class Certification Motion.

By: s/ James C. Vlahakis
One of the Attorneys for Defendant BUREAU OF COLLECTION RECOVERY LLC

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¹ Plaintiff may argue that Defendant was obligated to gather the discovery at issue prior to Plaintiff filing a motion to compel. This potential argument runs contrary to FRCP 1 and the right of all parties to object to what they believe is burdensome discovery.

CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2011 I electronically filed the above Motion with the Clerk of the Court using the CM/ECF system which will send notification of such filing(s) to all counsel of record.

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| | By: <u>s/ James C. Vlahakis</u> One of the Attorneys for Defendant BUREAU OF COLLECTION RECOVERY LLC |
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